

Review of National Roaming

Preliminary view on the deregulation of National Roaming

Date: 12 June 2023



Glossary, defined terms and abbreviations

Term	
Act	Telecommunications Act 2001
Commission	Commerce Commission
Provider	A telecommunications service provider
Subscribers	Customers of mobile network operators

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Executive summary

1. The Commerce Commission (**Commission**) is required to decide if there are reasonable grounds to commence an investigation into whether to remove the National Roaming service from the list of specified services in Schedule 1 of the Telecommunications Act 2001 (**the Act**). The Commission will provide its final views on this matter by 11 September 2023.
2. The Commission’s preliminary view is that there are no reasonable grounds to commence a Schedule 3 investigation into whether to omit the National Roaming service from Schedule 1 of the Act.
3. This document summarises the reasons for our view and seeks your comment by 5pm on Monday 10 July 2023.

Introduction

What is the National Roaming service?

4. Mobile roaming services allow subscribers of one Mobile Network Operator (MNO) to use their mobile devices on another network when outside the coverage area of the network to which they subscribe.
5. Part 3 of Schedule 1 of the Act describes the National Roaming service as:¹

A service (and its associated functions) that enables transmission of cellular mobile traffic by means of the access provider’s cellular mobile telephone network between (but not including) the cellular mobile device of the access seeker’s end-user and the access seeker’s handover point (or equivalent facility) and that enables an end-user who subscribes to an access seeker’s cellular mobile service to use services (except value-added services) within the area where the access provider has a cellular mobile telephone network, but which is outside the coverage area of the access seeker’s cellular mobile telephone network.
6. A roaming service allows a new MNO to increase the coverage of mobile services it offers to its subscribers. Roaming provides access to different generations of mobile technology and allows extended geographic reach, such as nationwide 4G access for an MNO offering 5G services in selected geographic areas.
7. Experience suggests that a new MNO entering the market is likely to require a roaming arrangement while it deploys its own infrastructure. The existing regulatory framework therefore provides a backstop for commercial negotiation of roaming arrangements.

¹ Part 3 of Schedule 1 includes other requirements relating to the National Roaming service (e.g., non-price terms and conditions). This quote only relates to the “description of service” component of the National Roaming service.

Legislative framework

8. Clause 1(3) of Schedule 3 of the Act requires that the Commission consider, at intervals of not more than 5 years after the date on which a designated service or specified service comes into force, whether there are reasonable grounds for commencing an investigation into whether the service should be omitted from Schedule 1 of the Act.
9. Where a designated service or specified service is amended or altered, the effective date of that service coming into effect is the date the altered or amended service came into effect. The National Roaming service was amended on 11 September 2008. Therefore, the current five year interval for the National Roaming service ends on 11 September 2023.²
10. A review by the Commission under clause 1(3) of Schedule 3 of the Act is limited to considering whether there are reasonable grounds for commencing an investigation into whether the service should be removed from Schedule 1. It does not extend to considering introducing a new service or amending an existing service.
11. If the Commission decides that there are reasonable grounds for commencing an investigation into whether a designated service or specified service should be omitted from Schedule 1 under section 66(b), the Commission must commence the investigation not later than 15 working days after making that decision.³
12. The focus of a five yearly review is to assess whether a regulated service should be recommended for removal from Schedule 1 of the Act assuming there are reasonable grounds for commencing an investigation under clause 1(3) of Schedule 3.
13. The Commission also has the option at this time to consider whether to amend or alter a regulated service under clause 1(1) of Schedule 3 of the Act. However, this is not within the purview of the five yearly review; a separate review would be required but could easily be subject to the same process under Schedule 3.
14. We acknowledge some aspects of the National Roaming service set out in the Act may require modernisation to reflect changes in technology and market structure since its introduction. However, this is beyond the scope of this review.

What are considered reasonable grounds to investigate?

15. In reaching a view on whether there are reasonable grounds for commencing an investigation, section 19 of the Act requires us to make the decision that will give, or

² The Gazette notice was published on the 14th August 2008, available at www.legislation.govt.nz/regulation/public/2008/0251/latest/DLM1450501.html - Telecommunications (National Roaming) Order 2008 (SR 2008/2511). The effective date of this Order is 28 days following the publication in the Gazette, therefore the date from which to determine the 5-year period is 11 September 2008.

³ Schedule 3, clause 1(5).

likely to best give, effect to the purpose set out in section 18 of the Act. The section 18 purpose is:

"...to promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand by regulating, and providing for the regulation of, the supply of certain telecommunications services between service providers."

16. The Commission considers that reasonable grounds to investigate whether a service should be omitted from Schedule 1 exist where it appears that competition may have developed to such an extent that continued regulation is no longer necessary to best promote competition in telecommunications markets for the long-term benefit of end-users.

Commission's preliminary view

17. In its last review of the National Roaming service in September 2018, the Commission concluded that there were no reasonable grounds to start a Schedule 3 investigation into whether to remove the National Roaming service from Schedule 1 of the Act.
18. The Commission's preliminary view is that, at this point in time, there are still no reasonable grounds to start a Schedule 3 investigation into whether to remove the National Roaming service from Schedule 1 of the Act.
19. As noted above, the Commission considers reasonable grounds to investigate exist where changes to competition in the market may have developed to a point where regulation no longer serves its intended purpose. As such, the key question for consideration is whether anything has sufficiently changed in the market since our last review that negates the need for the National Roaming service to remain as a specified service in Schedule 1 of the Act.
20. In forming our preliminary view, we have considered what changes have occurred within the New Zealand telecommunications market since the last review in accordance with Section 19 of the Act.
21. Since the last review, 2degrees has extended its coverage and ended its reliance on National Roaming to provide coverage at the edges of its network. Roaming arrangements were an important tool enabling the early entry and expansion of 2degrees in the market.
22. Now that 2degrees has reached its potential as a fully-fledged national operator there is a question as to whether roaming regulation is still required.
23. On one view, now that there are three competing national MNOs, a potential new entrant has greater prospects of negotiating and agreeing national roaming arrangements with one of them. There is arguably more competitive tension at the wholesale level of the market now than there was when 2degrees itself was seeking to enter and grow. This can be seen in the wholesale access arrangements that

various mobile virtual network operators (MVNOs) have been able to negotiate in recent years.

24. However, while we have observed some growth in MVNO arrangements, they remain relatively small in scale, and involve the use of the host operator's network services over the longer term. It is not clear to us that mobile network operators would have similar incentives to support a new entrant mobile operator through its entry phase with a national roaming service, as this would eventually lead to an additional competitor in the mobile market at both retail and wholesale levels.
25. It is therefore not clear to us that the importance of roaming from a competition perspective has fallen away with the extent of 2degrees' reliance on it. Roaming is likely to be just as important to any future new entrant into the mobile market as it was for 2degrees in the past.
26. Recent 5G spectrum allocations and the potential for 5G to be used on a standalone basis leave open the possibility of future entry in the New Zealand mobile market.
27. We therefore consider it prudent to leave the current regulatory backstop in place as a competitive safeguard. This is particularly the case when:
 - 27.1 Regulation operates at the lower "specified service" level.
 - 27.2 Any costs associated with retaining the specified service backstop do not appear to be material or outweighed by the benefits of retention.
 - 27.3 Regulation has not constrained the ongoing development of the New Zealand mobile market – as seen most recently in the Vocus/2degrees merger, the growing number of MVNOs, and the creation of independent tower companies.
 - 27.4 The impact of emerging technologies, such as low earth orbit (LEO) satellites, on the need for roaming arrangements in the future remains uncertain at this point.
 - 27.5 It is not yet clear whether the market is sufficiently competitive to make roaming regulation unnecessary.
28. For these reasons, our preliminary view therefore remains that National Roaming plays an important role as a regulatory backstop against which commercial negotiations take place, providing an incentive for access providers to engage on reasonable commercial terms.

Submissions

29. We invite submissions on this Preliminary View of National Roaming as a specified service which is conducted under clause 1(3) of Schedule 3 of the Act. Stakeholders are requested to comment on the preliminary view we have reached.

30. Understanding the cost of maintaining regulation is an important dimension to our decision-making at the Commission. We therefore welcome any views and relevant evidence that parties may wish to provide in this regard.
31. The closing date for submissions is 5pm 10 July 2023. Your submission should be provided as an electronic copy in an accessible form. Please email your submission to market.regulation@comcom.govt.nz with the subject line "**Submission: National Roaming Review.**"
32. We intend to publish all submissions on our website. If you wish to provide commercially sensitive information in your submission, we request that you provide, as necessary, confidential, and public versions of your submission.
33. When including commercially sensitive or confidential information in your submission, we offer the following guidance:
 - 33.1 please provide a clearly labelled confidential version and public version;
 - 33.2 please provide reasons alongside any information in the confidential version as to why it is commercially sensitive or confidential information; and
 - 33.3 the responsibility for ensuring confidential information is not included in a public version of a submission rests entirely with the party making the submission.
34. If we consider disclosure of information, for which confidentiality is claimed to be in the public interest, we will consult with the party that provided the information before any public disclosure of that information is made.

Next steps

35. After considering the submissions, we will publish our final decision on whether to investigate omitting the National Roaming service from Schedule 1 under clause 1(3) of Schedule 3 of the Act.